In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 723

CLARENCE E. MANSFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

A district judge, sitting in the United States District Court for the Northern District of Illinois, found petitioner guilty on four counts of willful attempted evasion of income tax for the years 1957, 1958, 1959 and 1960, in violation of Section 7201 of the Internal Revenue Code of 1954. Petitioner received concurrent sentences of one year in prison on each count (Pet. 2). The Court of Appeals for the Seventh Circuit affirmed (Pet. App. A 1-9).

The government's evidence proved unreported in-

282-071—67

come in each of the four years from petitioner's medical practice as follows:

1957	$10,247.62
1958	13,066.80
1959	17,061.14
1960	8,010.32

The resulting tax deficiencies exceeded $10,000. (Pet. 7; Govt. Ex. 43.)

The investigation commenced in April 1961, when two special agents of the Internal Revenue Service went to petitioner's office and advised him that his case had been referred to them for investigation; and that their function was to "see if there has been any wilful attempt to evade and defeat taxes, and that there was possible criminal prosecution, and he does not even have to talk to us or show us any records." Petitioner replied, "I understand. There is nothing to hide." (Tr. 453–454.) Petitioner was not advised of his right to counsel. He produced two books of records for examination by the agents. (Tr. 455.)

In July 1962, a revenue agent informed petitioner that he was conducting an investigation for the years 1957, 1958 and 1959 (Tr. 393). In view of the previous warning, this agent did not advise petitioner of his rights (Tr. 413–414), and petitioner made numerous records available to him (Tr. 403). Although petitioner was again warned of his rights in October 1962 (Tr. 368–369), he continued to cooperate (Tr. 488). At no time during the investigation, however, did

petitioner ever produce records relating to receipts of income from personal injury patients, which constituted the bulk of his practice (Tr. 1033).

There is no merit in the argument (Pet. 10–17) that *Miranda* v. *Arizona*, 384 U.S. 436, requires the suppression of the books and records petitioner produced for examination by the revenue agent in July 1962. This trial was held in December 1965 (Pet. 12), and the warnings called for by *Miranda* are not required with respect to trials which commenced before the decision was announced, June 13, 1966. *Johnson* v. *New Jersey*, 384 U.S. 719.

Moreover, petitioner plainly was not in custody or deprived of his freedom in any way, and therefore was not subject to the kind of compulsion that the rules of *Miranda* were designed to prevent. The courts of appeals in five other circuits agree that the *Miranda* warning was not required in such a case.[1] *Schlinsky* v. *United States*, 379 F. 2d 735 (C.A. 1), certiorari denied, October 23, 1967, No. 436, this Term; *Thomas* v. *United States*, 370 F. 2d 96 (C.A. 5), cer-

[1] Petitioner implies (Pet. 11) that he was lulled into a false sense of security by the appearance of a revenue agent, rather than a special agent, and that he might not have cooperated had he been aware that there was still a special agent in the case. In contrast, petitioner testified at the trial that he did not know the difference between a revenue agent and a special agent (Tr. 434).

tiorari denied, 386 U.S. 975;[2] *United States* v. *Maius*, 378 F. 2d 716, 718–719 (C.A. 6), certiorari denied, October 16, 1967, No. 372, this Term; *Frohmann* v. *United States*, decided July 27, 1967, 20 A.F.T.R. 2d 5244 (C.A. 8), pending on petition for certiorari, No. 644, this Term; *Kohatsu* v. *United States*, 351 F. 2d 898 (C.A. 9), certiorari denied, 384 U.S. 1011.[3]

[2] Although this issue is not discussed in the Fifth Circuit's *per curiam* opinion, it is evident from Mr. Justice Douglas' dissent from the denial of certiorari in *Thomas* that the question was raised in the case. Cf. *Evans* v. *United States*, 377 F. 2d 535 (C.A. 5).

[3] *United States* v. *Schoenburg*, 19 A.F.T.R. 2d 348 (D. Ariz.); *United States* v. *Kingry*, 19 A.F.T.R. 2d 762 (N.D. Fla.), and *United States* v. *Turzynski*, 268 F. Supp. 847 (N.D. Ill.), on which petitioner relies (Pet. 14–16), have been discredited by appellate decisions in their respective circuits. The weight of district court opinions agrees with the views expressed in the courts of appeals. See *United States* v. *Gleason*, 265 F. Supp. 880 (S.D. N.Y.); *United States* v. *Fiore*, 258 F. Supp. 435, 440 (W.D. Pa.); *United States* v. *Hill*, 260 F. Supp. 139 (S.D. Cal.); *United States* v. *Carlson*, 260 F. Supp. 423 (E.D. N.Y.); *Moon* v. *Brennan* (E.D. Wis.), decided November 21, 1966, 19 A.F.T.R. 2d 641; *Stern* v. *Robinson*, 262 F. Supp. 13 (W.D. Tenn.); *United States* v. *Bachman*, 267 F. Supp. 593 (W.D. Pa.); *United States* v. *Neves*, 269 F. Supp. 158 (S.D. N.Y.); *United States* v. *Basil*, 268 F. Supp. 1018 (S.D. Fla.); *United States* v. *Bohrod* (W.D. Wis.), decided December 14, 1965, 67-2 USTC, par. 9622.

The petition for a writ of certiorari should be denied.[4]

Respectfully submitted.

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NOVEMBER 1967.

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[4] Petitioner lists as a question presented (Pet. 3), whether the evidence supported the district court's finding of wilfulness. The only other reference to the point is his recitation (Pet. 8–9) of the facts that he claimed below to show a lack of wilfulness. As the court of appeals pointed out (Pet. App. A 6–7), "There was ample evidence from which the Trial Judge could have decided beyond a reasonable doubt that defendant wilfully attempted evasion."

U.S. GOVERNMENT PRINTING OFFICE: 1967